

Internal Revenue Service

Department of the Treasury
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Legend

X =

A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Trust A =

Trust B =

Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =

State =

Dear :

This letter responds to your letter, submitted on behalf of X by X's representative dated September 11, 2012, requesting relief under section 1362(f) of the Internal Revenue Code.

Facts

According to the information submitted, X was established under the law of State on Date 1. X elected to be an S corporation for federal tax purposes effective Date 2. On Date 3, A transferred shares of X to Trust A and Trust B. Both trusts were eligible S corporation shareholders. On Date 4, Trust A terminated and distributed the shares of X to Trust 1, Trust 2, Trust 3 and Trust 4, with the intent that ESBT elections be filed to for each trust. However, the trustees of Trust 1, Trust 2, Trust 3 and Trust 4 failed to make the ESBT elections.

X represents that Trust 1, Trust 2, Trust 3 and Trust 4 are eligible to be ESBTs as of Date 4. X represents that the failure to file the ESBT elections resulting in the termination of X's election to be an S corporation was inadvertent and was not motivated by tax avoidance or retroactive tax planning. X and its shareholders agree to make any adjustments and amended returns required by the Secretary consistent with the treatment of X as an S corporation.

Law and Analysis

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1)(B) provides that for purposes of subchapter S, a "small business corporation" cannot have as a shareholder a person (other than an estate, a

trust described in § 1361(c)(2) or an organization described in § 1361(c)(6) who is not an individual.

Section 1361(c)(2)(A)(v) provides that, for purposes of § 1362(b)(1)(B), an ESBT may be an S corporation shareholder.

Section 1361(e) defines an ESBT. Section 1361(e)(1)(A) provides that, except as provided in § 1362(e)(2)(B), the term “electing small business trust” means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, or (III) an organization described in paragraph (2), (3), (4) or (5) of § 170(c), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) of the Income Tax Regulations provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of § 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that X's S election terminated on Date 4 because of the failure to timely file ESBT elections for Trust 1, Trust 2, Trust 3 and Trust 4. We further conclude that the termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 4 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent upon the filing of elections, within 120 days of the date of this letter, to treat Trust 1, Trust 2, Trust 3 and Trust 4 as ESBTs, effective Date 4, with the appropriate service center. A copy of this letter should be attached to each ESBT election. X and its shareholders must also file any necessary original or amended returns consistent with the relief granted within 120 days of the date of this letter.

Except as specifically set forth above, no opinion is expressed or implied concerning the federal tax consequences of the above-described facts under any other provision of the Code, including whether X was otherwise a valid S corporation or whether Trust 1, Trust 2, Trust 3 and Trust 4 are otherwise valid ESBTs.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your taxpayer representative.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter
Copy for section 6110 purposes

cc: